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In the

Supreme Court of the United States

October Term, 1972

CHARLES H. MOGULNICKI
Petitioner.

VS.

STATE OF CONNECTICUT
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No.

CHARLES H. MOGULNICKI

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VS

STATE OF CONNECTICUT

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

To the Chief Justice and Associate Justices of the United States Supreme Court.

The Petitioner, Charles H. Mogulnicki, prays that this court, issue to review the judgment of the United States Court of Appeals for the Second Circuit, in the above case.

OPINION BELOW

The opinion below is reported at Civil No. 14,304 and is printed in the appendix of this petition for Summary Judgment.

JURISDICTION

The Judgment of the court below was entered on November 21,1972. A timely appeal to the United States Court of Appeals was filed, and the judgment affirmed on April 18,1973. The jurisdiction of this court is invoked under the 4th and 14th Amendments to the United States Constitution.

PRINCIPAL ISSUES

1. Whether the United States District Court, abused its discretion in dismissing and denying tne plaintiffs motion for summary judgment as a matter of law and granting the defendants, cross motion for summary judgment, on the defense of Statute of Limitation.

2. Whether the United States District Courts, dismissal and denial of the plaintiffs motion for summary judgment as a matter of law, was made with prejudice.

3. Whether the defenses raised by the defendants, proper basis for the United States District Court, to shun the mandate of the United States Constitution.

STATEMENT OF THE CASE

On December 4,1967 Trooper Robert Keller and Sgt. Morton Dennerstein of the Criminal Intelligence, State of Connecticut, made a warrantless arrest and conducted a warrantless search and seizure of the petitioners person at his place of employment,Standard Knapp,Main Street, Portland, Connecticut. Charged the petitioner with the crime of "pool-selling" a misdemeaner under Section 53-295 of the Connecticut General Statutes and seized the sum of $705.00 from a wallet on his person.

A motion to dismiss the information against the petitioner, on the grounds that the warrantless arrest and warrantless search and seizure of $705.00 from the petitioner was in violation of the Statutes of the State of Conn. and of Section 7-9 of Article First of the Connecticut Constitution of 1965 and of Amendments 4 and 14 of the Constitution of the United States, was denied on July 5,1968.

On July 11,1968 the petitioner was brought to trial, was convicted before a jury and Judge Eli Cramer in the 9th Circuit Court of Connecticut, receiving a sentence of one year in jail, suspended after (60) days and a $200.00 fine. The money seized from the petitioners person, the slips of papers with horses names on them, that were never in the possession of the petitioner, scooped up between 5 or 6 persons at the tool-makers bench, the "Sports Eye" newspaper taken from the petitioners tool-box, this evidence seized after the arrest of the petitioner was introduced to the court.

On Jan. 9,1970 the Appellate Division of the Connecticut State Court, found no error in the conviction of the petitioner, this court did not pass upon the Constitutionality of the petitioners arrest. The Connecticut Supreme Court, denied the petitioner his petition for Certification.

On December 16,1970 the petitioner was put in detention by the State of Connecticut, at the Hartford State jail to serve a (60) day sentence, on Feb. 16,1971 petitioner served his entire sentence and upon his release, paid the State of Connecticut the fine.

On March 15,1971 the petitioner, filed a suit for damages for $250,000.00 upon the defendants, for an Illegal arrest, Illegal detention and payment of an Illegal fine.

On March 3,1972 the petitioner, filed a motion for trial by jury. The motion was denied.

REASONS FOR GRANTING WRIT

Two reasons are presented. (1) That the petitioner was denied, due process and equal protection under the law, because the State introduced to the court, evidence seized after the arrest.(2) That the petitioner, was denied due process and equal protection under the law,

because the State introduced evidence seized with-out a search warrant to the court.

CONCLUSION

For the reasons giving it is respectfully submitted that the judgment of the lower courts, must be reversed as a matter of law.

CASE AUTHORITIES

ARTICLE 4 of the Bill of Rights, provides.

" The right of people to be secure in there persons, houses, papers and effects against unreasonable searches and seizure, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particilarly describing the place to be searched, and the persons or things to be seized."

Henry v United States, Supra 361 U.S. at 103.

The Fourth Amendment specifically interdicts the court from considering evidence seized after the arrest in determing the validity of the arrest.

State of Connecticut v Mogulnicki, (1970) 270 2d 364.

The results of a search and seizure cannot be used to sustain a finding of probable cause for arrest.

Pro-Se Attorney for Petitioner.

APPENDIX

CHARLES H. MOGULNICKI, Plaintiff

VS

STATE OF CONNECTICUT, Defendant

CIVIL NO. 14,384

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

NOVEMBER 21, 1972

Hon: T. Emmet Clarie, Judge.

RULING ON CROSS-MOTION
FOR SUMMARY JUDGMENT

The plaintiff, Charles H. Mogulnicki, has moved for summary judgment pursuant to Rule 56, Fed.R.Civ.P., and the defendant, State of Connecticut, has similarly filed a cross motion asking for summary judgment. The plaintiff filed this action in Court on March 15,1971, against the State of Connecticut, claiming that he had been illegally arrested and detained with-out a warrant for the crime of "pool selling" and that $705.00 was seized from his person coincidental with his arrest, for which no prior warrant or search warrant had been issued. The plaintiff alleges that his prosecution, conviction, and detention constituted a gross injustice to him under the Fourth and Fourteenth amendments to the United States Constitution. He presently claim that his alleged illegal arrest caused him the loss of his job on December 5,1967 and his continued unemployment to date. He also alleges that as a result of his conviction he was required to serve his jail sentence and pay an illegal fine.

He seeks money damages against the State in this Court of $250,000.00. The Court finds that the action is without legal merit, grants summary judgment to the defendant and dismisses the action with taxable costs assessed against the plaintiff. The State of Connecticut has defended against the action on several grounds, namely; (1) That the State is immune from suit; (2) that the statute of limitation bars the action, and (3) that the issues are res adjudicata by reason of the State finding in the criminal proceedings. Anyone of these defenses, if well founded, would conclude the action in favor of the defendant. In weighing the inferences to be drawn, from the facts before the Court in any summary judgment proceeding, the underlying facts must be construed in a light most favorable to the party opposing the motion, in this instance, the plaintiff. The plaintiffs complaint alleges that the conduct complained about occurred December 4,1967, when he was arrested by State Troopers, Keller and Dennerstein, for a violation of state law. The present action was not filed in this Court until March 15,1971, in the Court Clerks office, at New Haven. Obviously, since on the face of the complaint, more than three years have elapsed, between the time when the incident complained about was sustained and the bringing of this action the suit is barred by statute and must be dismissed.

ORDERED. that the plaintiff's motion for summary judgment be, and hereby is denied; and that the defendant's cross-motion for summary judgment be, and hereby is granted; and the case is dismissed with taxable costs assessed against the plaintiff.

Judgment, Affirmed, by the United States Court of Appeals for the Second Circuit, on the opinion of Judge T. Emmet Clarie, by Hon: Tom C. Clark, Sterry R. Waterman, and Wilfred Feinberg. Case No.73-1010